

CARDER & CO., PLAINTIFF AND APPELLEE, VS, THE UNITED STATES, DEFENDANT AND APPELLANT.

G. R. No. 2839. August 15, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

The plaintiff imported into the Philippine Islands forty-three pieces or packages, alleged in the declaration of the importer to constitute an "oil mill completed for working copras and other seeds into oil, and a portable steam engine. In the declaration made by the plaintiff, the said steam engine was not declared to be a part of the "oil mill complete." The Collector of Customs classified the said "oil mill complete" and the portable steam engine as "other machinery," under subdivision (b) of paragraph 257 of Act No. 230[1] of the Philippine Commission, at \$1 per 100 kilos, not less than 25 per cent ad valorem, instead of as "agricultural machinery and apparatus for pile driving, dredging, hoisting, making or repairing roads, for refrigerating and ice making, for making sugar, preparing, rice or hemp and other vegetable products of the Islands for the markets," under paragraph 245, at 25 cents per 100 kilos gross weight.

The Collector of Customs in deciding the protest held that—

"A machine for extracting oil from the meat of the cocoanut, thereby making of a vegetable product-to wit, cocoanuts an entirely different article, is not such machinery as is contemplated in paragraph 245 of said act, and can not be classified thereunder.

"The protestors contend that-machinery for extracting oil from cocoanuts is as much for preparing vegetable products of the Islands for the markets as is machinery for extracting sugar from sugar cane and that, as sugar-making machinery is dutiable under paragraph 245, machinery for extracting oil from cocoanuts should also be classified under that paragraph. This argument would have considerable force if sugar-making machinery were assessed for duty under the same provision in paragraph 245 under which it is contended that the machinery in question should have been assessed."

From this decision of the Collector of Customs the plaintiff appealed to the Court of Customs Appeals, which court held that—

"The portable engine and oil-mill machinery in controversy are properly classified under paragraph 245 of the Tariff Revision Law of 1901 (Act No. 230) and the decision of the Collector of Customs is modified to conform with this finding."

From this decision of the Court of Customs Appeals the defendant appealed to this court. The questions presented are:

- (1) Whether the forty-three pieces of one "oil mill complete" for working copras and other seeds into oil should be classified as "machinery and apparatus for preparing vegetable products of the Islands for the markets;" and
- (2) Whether the said portable steam engine which was not declared as a part of the said "oil mill complete"

should be classified under paragraph 245 of Act No. 230 or under paragraph 257.

The second question has already been answered by this court in the decision in the case of *Calder & Co. vs. The United States*¹ (5 Off. Gaz., 465). In that decision the court decided that a portable steam engine should be classified under subdivision (b) of paragraph 257 of said Act.

With reference to the first question we are of the opinion and so hold that the forty-three pieces constituting an "oil mill complete for the working of copras and other seeds into oil" should be classified under subdivision (b) of paragraph 257.

The plaintiff contends that a machine for extracting oil from cocoanuts is a machine for preparing vegetable products of the Islands for the markets, arguing that the manufacturing of oil from the meat of the cocoanut no more changes the form of the vegetable product than the making of sugar from sugar cane and that, inasmuch as machinery for the making of sugar is classified under paragraph 245, machinery for the making of oil out of the meat of the cocoanut should also be classified under the same paragraph. It will be noted, however, that the language used in said paragraph 245 is "machinery and apparatus for the making of sugar," while the language relating to the vegetable products of the Islands is "machinery and apparatus for preparing vegetable products," etc.

We are of the opinion and so hold that the machinery and apparatus which extract the oil from the cocoanut and other oil-producing vegetable products of the Philippine Islands is not a machine for preparing the vegetable products for the markets.

It will be noted that the language of said paragraph 245 relating to rice is "preparing rice," etc., for the markets. Suppose, for example, that a person should bring into the Philippine Islands a machine for the making of flour out of rice. The flour, while it is a vegetable product, is no longer rice and is therefore not "rice prepared for the markets." Furthermore, suppose a person should bring into the Philippine Islands a machine for the manufacture of beer out of rice or other vegetable products of the Islands. Could it be contended that the beer was a vegetable product, prepared for the markets, prepared out of rice? It is no longer rice and is therefore not "rice prepared for the markets."

If further examples were necessary we might mention corn, for instance. Suppose machinery was brought into the Philippine Islands for the purpose of preparing whisky from corn. Could such machinery be classified under paragraph 245 as apparatus for "preparing vegetable products for the markets?" While it is true that oil extracted from the cocoanut, or flour made from rice, or beer made from the same product, or whisky made from corn, may be regarded as vegetable products, yet they are entirely different from the original, and machinery for the purpose of making these various products can not be classified under paragraph 245, and not being mentioned in other sections of said law must be classified under "other machinery" under paragraph 257.

Therefore the judgment of the lower court is hereby reversed and the decision of the Collector of Customs is hereby affirmed. It is hereby ordered that the cause be remanded to the Court of First Instance of the city of Manila with direction that a judgment be there rendered in accordance herewith. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

[1] I Pub. Law, 607.

[1] Page 303, *supra*.

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